

ALLEN RUBY (SBN 47109)
LAW OFFICES OF ALLEN RUBY
125 South Market Street #1001
San Jose, CA 95113
Telephone: (408) 998-8500 ext. 204
Facsimile: (408) 998-8503

DENNIS P. RIORDAN (SBN 69320)
DONALD M. HORGAN (SBN 121547)
RIORDAN & HORGAN
523 Octavia Street
San Francisco, CA 94102
Telephone: (415) 431-3472
Facsimile: (415) 552-2703

Attorneys for Defendant
BARRY LAMAR BONDS

UNITED STATES OF AMERICA,

Plaintiff,

VS.

BARRY LAMAR BONDS,

Defendant.

DEFENDANT'S RESPONSE TO UNITED STATES' OPPOSITION TO MOTION TO SEAL

Defendant respectfully submits the following in response to the Government's Opposition to Defendant's Motion to Seal.

1. The Defendant's Motion to Seal was filed in an abundance of caution. The defense has received thousands of pages of discovery from the Government, including Grand Jury transcripts, and Grand Jury exhibits. In some instances it is not possible to determine whether particular documents were originally obtained by the Government by a Grand Jury Subpoena, or a search warrant, or other means.

Especially in light of the rancorous history of the BALCO litigation, the defense did not

1 want its Motion in Limine to be greeted by a Government claim that Grand Jury secrecy had
2 been violated, or the confidentiality of discovery materials had somehow been breached. Those
3 concerns are now mooted because the Government has made it clear that there are no
4 confidentiality limitations on materials supplied in discovery.

5 2. The Court in its discretion may wish to consider whether jury selection will be
6 unduly burdened by immediate publication of laboratory “tests” and hearsay documents that may
7 never come into evidence. Of course there will be a public trial at which all the testimony and
8 other evidence will be freely accessible. That is not quite the same as endorsing publication,
9 prior to jury selection, of inflammatory materials that the trial jury may never see.

10 3. What should be immediately unsealed, beyond any doubt, are all documents on
11 file in this Court in the BALCO case. The pleas and sentencings in BALCO are years old, yet
12 there are still sealed and redacted search warrants and sealed motions, among other things, in the
13 Clerk’s Office. In light of the Government’s professed advocacy for “a presumed right of access
14 to pretrial proceedings and documents,” (United States’ Opposition at page 2), the Government
15 undoubtedly will join the defense in making sure that the entire BALCO record is finally open to
16 public scrutiny.

17 This is a matter of consequence to the pending Motion in Limine. The Government’s
18 letter of December 26, 2008, suggests that it will try to use BALCO documents and one of the
19 BALCO principals to establish a foundation for evidence against Mr. Bonds. The Government
20 has represented that its BALCO files have been made available to the defense in discovery.

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1 There is no conceivable reason, then, why BALCO documents on file with the Court should any
2 longer be sealed or redacted.

3 Dated: January 20, 2009

Respectfully submitted,

4 LAW OFFICES OF ALLEN RUBY

5 ARGUEDAS, CASSMAN & HEADLEY, LLP

6 RAINS, LUCIA & WILKINSON, LLP

7 RIORDAN & HORGAN

8 By /s/Allen Ruby
9 Allen Ruby

10 Counsel for Defendant
11 Barry Lamar Bonds
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